part of his face covered up, which indicates that he was known to the deceased and did not wish to be recognized.

In his final address to the jury Crown Counsel explained the law as to common intent with the greatest clarity, and submitted that if the 2nd appellant was there with two others with the common intent of murdering the deceased, it was immaterial who struck the fatal blow. He prefaced his remarks by stating that the Judge would fully direct the jury as to the law. Unfortunately the learned trial Judge did not do so. It seems clear from the summing up that he only directed the jury as to whether the 2nd appellant was the other assailant who struck the deceased with the knife but did not inflict the fatal wounds. It is of course possible that the jury came to the conclusion that he was in fact the assailant with the knife, and disregarded the deceased's failure to identify him and his misdescription of the second appellant's appearance.

If the jury accepted the circumstantial evidence, it was established that the 2nd appellant was seen in the company of Lechman Singh on the evening before the murder, and that he was likewise seen by Chet Singh in the same company immediately after the murder, coming from the direction of the Hill Station, and that he was the owner of the spear with which the fatal blow was inflicted. There was evidence, therefore, from which the jury could properly infer that he was the third man in the back ground who, according to the deceased's statement, advised the two actual assailants to run away, and was accordingly guilty upon the principle of common intent. A finding to this effect, however, is a finding of fact, and this Court is unable to conclude that the jury must inevitably have made this finding. As the jury were never directed by the learned Judge on this particular issue, the verdict in the case of the 2nd appellant must be set aside, and a new trial ordered under the provisions of section 6 (2) of the Court of Criminal Appeal Ordinance (Cap. 11).

New trial ordered.

[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

May 11, 1939.

TOK SAM MUI v. REX.

(SINGAPORE MAGISTRATE'S APPEAL No. 29 of 1939)

Women and Girls Protection Ordinance—Section 23 Sub-section 2.

A statement made to the Protector of Chinese under Section 23 Sub-Section 2 of the Women and Girls Protection Ordinance whether sworn or unsworn cannot be a voluntary statement. It cannot be admitted in evidence against the person making the statement in any prosecution against him for trafficking in women or girls and importing women and girls by false pretences offences punishable under sections 5 and 5A of the Women and Girls Protection Ordinance (Chapter 33) as amended by Ordinance 13 of 1937.

Braga for appellant.

Butterfield (Crown Counsel) for the Crown.

This appeal was mainly on questions of fact but a point arose as to the admissibility of a statement made by the accused. So much of the judgment as refers to this point is as follows.

McElwaine, C.J.—A statement made by the accused to Mr. Band on the 26th was put in evidence. Whether the statement was made before or after arrest is not stated but from the order of events in Mr. Band's evidence it is more likely that it was made after arrest. Mr. Band said "I had previously warned him that anything he might say would be used in evidence. I made no inducement, threat or promise".

As the statement was a sworn statement it must be presumed that the statement was taken under section 23 of the Women & Girls Protection Ordinance, as subsection (4) authorises the administration of an oath. If the statement was taken under section 23, it cannot be regarded as a voluntary statement. It was argued by the Crown that the statement not being a confession the case of *Chow Eng v. Public Prosecutor* (1924) 4 F.M.S.L.R. 287 is inapplicable. That case decided that where a confession was taken on affirmation the affirmation constituted a threat or inducement. I doubt the correctness of that decision. An oath may be an inducement for those who respect oaths,—an inducement to tell the truth—but an oath is neither an inducement nor a threat of a kind that would lead the accused to expect to gain an advantage or avoid an evil of a temporal nature in reference to the proceeding against him, and that is the kind of inducement or threat that makes a confession irrelevant under section 29 of the Evidence Ordinance. In *Public Prosecutor v. Thamboosamy* 3 F.M.S.L.R. 18 the Court of Appeal held that where an accused person had been sworn before making a statement at the preliminary enquiry, the statement should be excluded at the trial. I think Sproule J. in a case in which I prosecuted when I was Deputy Public Prosecutor refused to allow me to put in (under what is now section 203 of the Criminal Procedure Code) a statement sworn by the accused at the preliminary inquiry, section 148 (now section 151) at that time not allowing an accused to give evidence on oath at the preliminary inquiry. That is a different point. I think the real objection to an

accused giving evidence on oath at a preliminary examination was that it exposed him to cross-examination and the law did not then allow him to be cross-examined. My recollection also is that during the same period Whitley J. allowed the accused's sworn evidence in chief at the preliminary enquiry to be put in but not his cross-examination.

In my opinion a statement made under section 23 of the Women and Girls Protection Ordinance whether sworn or unsworn cannot be a voluntary statement.

"The person so summoned"—I think it makes no difference whether the person is actually summoned to go to the Protector or whether the Protector goes to the person—"shall produce all documents and shall answer truthfully all questions which the Protector may put to him respecting any such woman or girl". If he fails to produce a relevant document in his possession, he commits an offence under section 175 of the Penal Code. If he does not give the information, he commits an offence under section 176 while if he gives untrue information he commits an offence under section 177 or section 193, and whether he could be convicted under any of these sections or not he could be punished under section 23 (5) of the Ordinance.

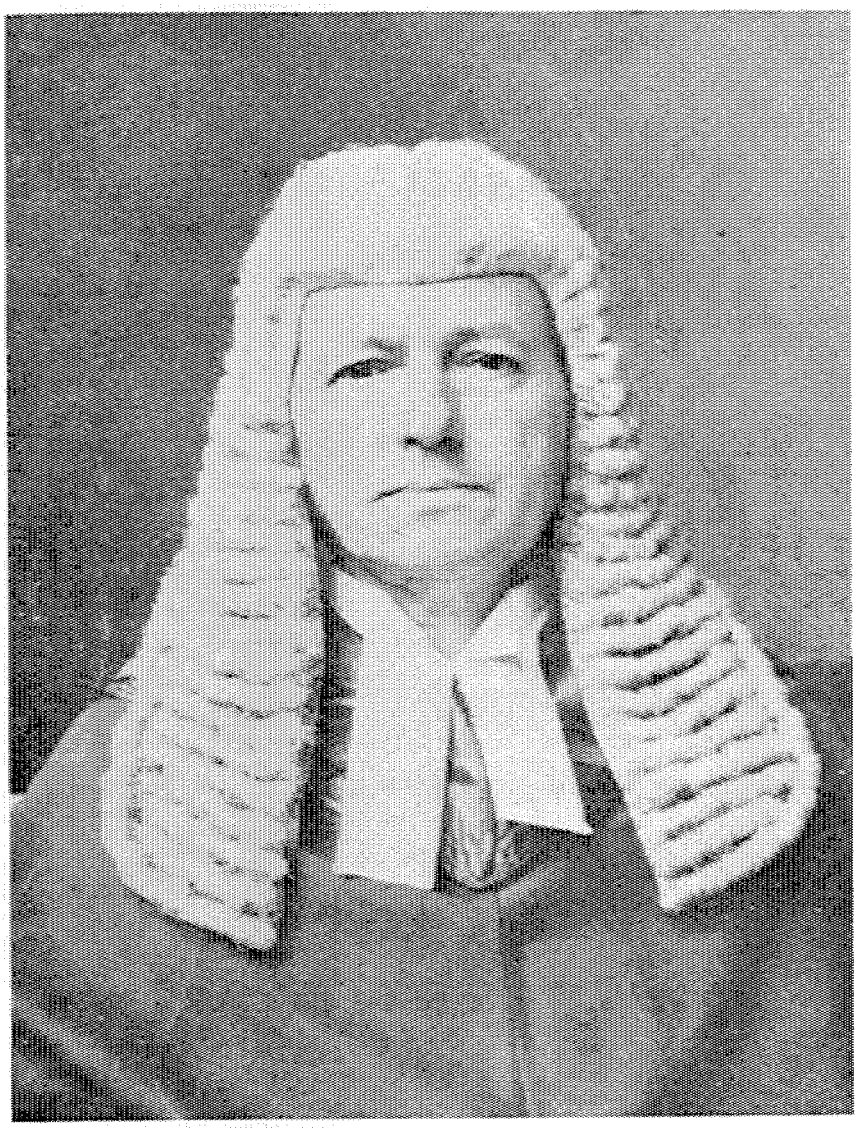
The section contains no provision similar to that in section 123 of the Criminal Procedure Code to the effect that a person examined by a police officer shall not be required to answer truly any question the answer to which would tend to expose him to a criminal charge.

It appears to me therefore that it would be contrary to all principle to allow a statement made under section 23 to be used in evidence against the person making it in the absence of clear statutory provision that such statement should be admitted in evidence and I was referred to no such provision. The present proceedings are not proceedings to which section 23 (3) applies.

The statement of the accused to Mr. Band was not a confession but nevertheless it should not have been admitted in evidence against the appellant. If the Protector desires to take a statement which he may wish to put in evidence he should not swear the person making the statement and he should not act under section 23, but should inform the person that he is not bound to answer any question which the Protector is about to ask.

Appeal allowed.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.



The Hon'ble Mr. JUSTICE KENNETH ELLISTON POYSER,
CHIEF JUSTICE,
FEDERATED MALAY STATES.